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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re George Christopher Fischer

Serial No. 76345954

James C. Wray, Esq. for George Christopher Fischer.

William H. Dawe III, Trademark Examining Attorney, Law
Office 108 (David Shallant, Managing Attorney).

Before Hanak, Holtzman and Rogers, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

George Christopher Fischer (applicant) seeks to register in typed drawing form OFFSHORE ADVENTURES for services, which as identified in the 3rd amended recitation of services, read as follows: "production of television programs and distribution of television programs, production and presentation of visual and audio works, movies, videos and television programs for cultural and entertainment purposes." The intent-to-use application was filed on December 7, 2001.

Citing Trademark Rule 2.71(a), the Examining Attorney refused registration on the basis that "applicant's [3rd] amended recitation [of services] contains services that are not within the scope of the recitation [of services] that was set forth in the application at the time of filing." (Examining Attorney's brief page 2).

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

Trademark Rule 2.71(a) provides as follows: "The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services." (emphasis added). See also In re Swen Sonic Corp., 21 USPQ2d 1794 (TTAB 1991).

In its original application, applicant's recitation of services read as follows: "production and distribution of television programs." In the first Office Action, the Examining Attorney stated that the "recitation of services was unacceptable as indefinite." The Examining Attorney then suggested that applicant may amend his recitation of services to read as follows: "production of television programs and distribution of television programs for others." (emphasis added). The Examining Attorney

explained that the addition of the words "for others" was necessary because "a service must be performed to the order of, or the benefit of someone other than the applicant." (original emphasis). The Examining Attorney then explained that the addition of the words "for others" to applicant's original recitation of services would make it clear that applicant's services are being performed for the benefit of entities other than applicant itself.

Thereafter, applicant amended his recitation of services on three occasions. On each occasion, the Examining Attorney took the position that applicant's amended recitation of services was impermissible pursuant to Trademark Rule 2.71(a) because the amended recitation of services constituted a broadening of the original recitation of services, which, as previously noted, read "production and distribution of television programs."

We agree with the Examining Attorney that applicant's third and final amended recitation of services includes services not included within applicant's initial recitation of services, and accordingly we affirm the refusal to register. Applicant's third and final amended recitation of services is broader than applicant's original recitation of services in two ways. First, applicant's original recitation of services was limited to the production and

distribution of television programs. Applicant's final recitation of services is decidedly broader in that it includes not only the "production of television programs and distribution of television programs," but in addition it includes the production and presentation of products besides television programs, namely, audio works, movies and videos. At page 2 of its brief, applicant argues that "the production and presentation of visual and audio works, movies and videos all describe types of television services, and should not be rejected as describing services outside of the original identification of services." We simply disagree. Clearly, audio works (sound only) and movies are not within the ordinary meaning of "television programs." If applicant truly believed that audio works, movies and videos were all but a part of "television programs," then applicant could simply have stood by his original recitation of services which read "production and distribution of television programs." In other words, applicant by adding in his final recitation of services the words "production and presentation of visual and audio works, movies, videos and television programs" has acknowledged that television programs are distinct from audio works, movies and videos.

Second, applicant's third and final recitation of services impermissibly broadens applicant's original recitation of services in a second way. Applicant's original recitation of services was limited to the production and distribution of television programs. Applicant's final recitation of services includes not only the production and distribution of television programs, but also the presentation of television programs. Obviously, applicant itself has by including the word "presentation" in its final recitation of services, acknowledged that the presentation of television programs is distinct from the production and distribution of television programs.

We also note that applicant argues at page 2 of his brief that his addition of the words "for cultural, educational and entertainment purposes" should be accepted and not rejected because such words "merely serve to limit the scope of goods to television services produced for these purposes." To be perfectly clear, if applicant had simply added the words "for cultural and entertainment purposes" to his original recitation of services, this would not constitute an impermissible broadening of the original recitation of services, but would instead constitute a permissible clarification or limitation of applicant's original recitation of services. In other

words, we are not sustaining the refusal to register because applicant has added the limiting and clarifying words "for cultural and entertainment purposes" to its original recitation of services.

One last comment is in order. While not relevant for deciding this case, we simply note that applicant's first and second amended recitation of services are also impermissible in that, like applicant's third and final recitation of services, they include products, such as movies, videos and audio works not encompassed by the original recitation of services.

Decision: The refusal to register is affirmed.